

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

2

3 JOHN R. SEXTON, JR.,  
4 Plaintiff,

5

6 vs. AT LAW NO. CL91000469

7

8 NORFOLK & WESTERN RAILWAY COMPANY,  
9 Defendant.

10

11

Conference Room,  
N & W Pocahontas  
DiviBion Building,  
800 Princeton Avenue,  
Bluefield, West Virginia

24701,

14

Wednesday, June 10, 1992.

15

16

17 The deposition of JOHN GOAD, taken by the Plaintiff  
18 before Amy S. Honaker, CCR, a Notary Public within and for  
19 the State of West Virginia at Large, pursuant to agreement  
20 of counsel, to be used as discovery and/or evidence at the  
21 trial of the above-styled matter, pursuant to the Rules of  
22 Civil Procedure, commencing at 12:00 p.m., EDST.

23

24

25 VOLUME: I ORIGINAL PAGES: 1 - 15

1450 Main Street -

Princeton, WV 24740

MMY REPORTING SERVICES (304) 425-5922

A P P E A R A N C E S

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4 . P. ., ESQ.,  
5 1294 Diamond Springs Road,  
6 Post Office Box 5369,  
7 Virginia Beach, Virginia 23455,  
8 appearing on behalf of  
9 the Plaintiff.

10

11

12

13

14 DAVID B. CARSON, ESQ.,  
15 Southwest Virginia Savings and Loan Building,

S.W., 16 Second Floor, 2nd Street and Campbell Avenue,  
17 Post Office Box 2200,  
18 Roanoke, Virginia 24009,  
19 appearing on behalf of  
20 the Defendant.  
21  
22  
2 3  
2 4  
2 5

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P R O C E E D I N G S

2

2 (Witness Sworn)

3 Whereupon,

4 JOHN GOAD

dull? 5 was called as a witness and, after having been first

6 sworn by the Notary Public, was examined and testified as

7 follows:

8 DIRECT EXAMINATION

9 BY MR. .:

your 10 Q Would you please state your full name and

11 home address?

12 A John Goad, Box 123A, Meador, West Virginia.

13 MR. CARSON: ., before you go - and  
14 you might have already gotten it - we stipulated and  
agreed

15 these are taken pursuant to the Rules of the Supreme  
Court.

16 BY MR. .:

i'l 17 Q And by whom are you employed?

18 James Coal Company, at the present.

19 How long have you been with the James Coal  
20 Company?  
21 A I have been in Glen Alum, '84.  
2 2 Q Since 1984?  
23 A At this present Place.  
24 Q And where is Glen Alum?  
2 5 A Wharncliffe, West Virginia.

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I Q What position have you held with that  
company,  
2 since 1984?  
3 .3L Foreman and quality control.  
4 Q Are they the same position?  
5 A No.  
6 Q When did you --  
7 A (interrupting) I was a Foreman till about  
a  
8 year ago. Now I'm quality control, now.  
9 Q So in January of iggo, You would have  
been the  
10 Foreman of the Glen Alum Mine?  
11 A Uh-huh.  
12 Q You have to answer Yes or No for the  
record.  
13 A Yes.  
14 Q What is done at the Glen Alum Mine?  
15 A We load coal on coal cars.  
16 Q Is any coke produced there?  
17 A No.  
18 Q If I can, I'm going to hand you a pad and  
a  
19 pen. If You could basically draw the area that you  
were  
20 working at the Glen Alum Mine where the railroad  
track goes  
21 through?  
22 A The mine office, right?  
2 3 Q Yes, sir.  
24 Okay. You have indicated on your  
diagram a box  
2 5 marked "loadout" and a box marked "office", and I assume

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1 are e TWO locations you just referred to?  
2 A Yes, sir.  
3 Q What are the two parallel lines drawn  
between  
4 the two boxes?  
5 A Railroad track.  
6 Q And are there any road crossings in that  
area?  
7 A There's one right in here (indicating).  
8 Q You can indicate by that -- by a single  
line.  
9 A There's a crossing that goes right here  
10 (indicating).  
11 Q Could you put an "X" on that particular  
line?  
12 And just mark "Road Crossing" below it.  
13 And do you know which direction would be  
east  
14 and west on that?  
15 A No.  
16 Q Which direction does the railroad track  
come  
17 f rom?  
18 A This way (indicating).  
19 Q Mark an arrow indicating that direction.  
20 And on which end does the railroad track  
end?  
21 You have drawn another "X". If you could,  
just  
22 write "End" below that.  
23 Q Do you know approximately how far back the  
24 railroad track goes from the line office?  
25 A Approximately fifty empties.

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1 I When you refer to an "empty", would that  
be an  
2 empty railroad car?  
3 A Yes.  
4 Q Do you know how much the distance of an empty  
5 railroad car is, or the length of an empty railroad car  
is?  
6 A About sixty feet.  
7 Q We can assume around sixty feet.  
8 So the track extends approximately -  
according  
9 to your calculations - about three thousand feet back  
from  
10 the mine office to the track?  
11 A That's a rough estimate I would say, yes.

12 Q And do you regularly receive empty cars from  
13 the railroad to load coal in?  
14 A Yes.  
15 Q Where are they stored when you receive them?  
16 A From here, back. From here at the loadout,  
17 back this way (indicating).  
18 Q You're indicating from the loadout to the end  
19 of the track?  
20 A End of the track, yeah.  
21 Q And are the cars always completely empty when  
22 you receive them?  
23 A Most of the time.  
24 Q If they are not empty, what is in them?  
25 A Sometimes you have gravel in them; coke;

sand.

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1 And what is done with this gravel or coke  
when  
2 You receive the cars?  
3 A Knock the doors and clean them out; clean  
the  
4 stuff south.  
5 Q Why do you sweep out the cars?  
6 A We send the cars out of the hollow. All  
they  
7 want is coal in them, and nothing else. They want them  
8 clean.  
9 Q And who sweeps out the cars?  
10 A The employees.  
11 Q And where is the coke and sand and gravel  
left?  
12 A Where it's knocked out, out of the cars.  
13 Q Does it go on any particular side of the  
track?  
14 A Most of them, it could be either side.  
15 Q And where is that?  
16 A And in the middle, too. Because where the  
17 cars -- underneath the cars, that's where it falls out.  
18 Q Is the coke and gravel and other debris that  
19 you sweep out, ever cleaned up?  
20 A About every summertime they bring, I guess a  
21 pan, they call it; clean the middle of the track out.  
22 Q You refer to "they". Who actually does the  
2 3 cleaning up?  
24 A I guess N & W.  
25 Q Does your company ever do it?

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1 A No.

2 Q And how often is it cleaned?

3 A I guess every summer; once a year.

any  
4 Q Before January of '90, did you ever receive  
5 complaints of coke on the walkways beside the track, from  
6 anyone?

7 A No.

were  
8 Q Do you recall the last time the walkways  
9 cleaned before January of 1990?

10 A The "walkways"? What do you mean by  
11 ".walkways"?

3  
12 Q The walkways alongside the track. Do you  
13 recall if they were ever cleaned before January of 1990?

14 A We just knock the stuff out. We don't ...

15 Q Do you know John Sexton?

16 A Yes.

17 Q How do you know him?

18 A He's a brakeman on the railroad.

19 Q And how did you come to know him?

empties  
20 A He brings cars up the hollow; delivers  
21 to us.

22 Q Is that the only way that you know him?

2 3 A Yes.

17th  
24 Q Do you recall him being injured on January  
25 of 1990?

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1 I don't know what date it was. But he said  
he  
2 was injured. I guess in 1990.  
3 Q How did You find out about his injury?  
4 A He came -- They pushed empties up the hollow  
at  
5 the end of the track, and he came down the hollow and  
said  
6 he hurt his back.  
7 Q And do you recall when that was?  
8 A I guess in -- late in the evening, I guess.  
9 It's been so long ago, I don't remember that.  
10 Q And do you recall that being in January of  
11 1990?  
12 A I couldn't tell you that, either.  
13 Q What did he tell N,ou?  
14 A He just said he stel)ped on some coke or  
15 something and hurt his back.  
16 Q Did you go in and inspect the area?  
17 A No, I didn't.  
18 Q What is coke?  
19 A I guess it's burnt coal. I don't know.  
20 Q Do you know that, for a fact?  
21 A No, sir.  
22 Q The material that you are referring to as  
coke,  
23 what does it look like?  
24 A Like burnt coal. It's ash or cinders.  
25 Q And how large are the pieces approximately?

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1 A Various sizes.  
2 Q How large can they get?  
3 A I have seen some up to about six inches; in  
4 that area.  
5 Q And this is in the area down in the  
tracks that  
6 we're talking about?  
7 A Along the track, various places.  
8 Q Is coke a safe walking surface?  
9 A I don't walk on it.  
10 Q Why not?  
11 A Because it's not like gravel, it's different

12 sizes. I walk away from the track, so ... I  
encourage my  
13 men to.  
14 MR. .: That's all I have, David.  
15 Please answer any questions Mr. Carson has.  
16 CROSS-EXAMINATION  
17 BY MR. CARSON:  
18 Q Mr. Goad, my name is David Carson. I  
represent  
19 the railway in the lawsuit brought against it by Mr.  
20 Sexton.  
21 You have been in or around mines for  
22 approximately fifteen years, is that true?  
23 A Yes, sir.  
24 Q And coke, in or around the tracks, is a  
fact of  
25 life at mines. Isn't that true?

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1 A Yes, sir.  
2 Q And the area between the tracks at the Glen  
3 Alum Mine where apparently Mr. Sexton claims he was  
4 injured, that contains ballast for the most part. Isn't  
5 that true?  
6 A Most places, yeah.  
7 Q And the purpose of ballast is to form a  
track  
8 bed for traction and also for drainage purposes, is  
that  
9 right?  
10 A That's right.  
11 Q If you needed to walk on an area that was -  
-  
12 that had both ballast on it and coke on it, would you  
13 prefer to work on the ballast -- to walk on the ballast?  
14 A Yes, sir.  
15 Q And you can easily discern the difference  
16 between coke and ballast, isn't that true?  
size;  
17 A Yes, sir. Ballast is much more uniform-  
18 most of it.  
and  
19 Q And you're careful when you're walking in  
20 around coke, because it's a fact of life out there?  
21 A Sure.  
22 Q And in your fifteen-year experience in or  
23 around mines, you have never heard of anyone slipping on  
24 coke. Is that true?  
25 A Not to my knowledge, no, sir.

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1 MR. CARSON: I think that's it, ..

2 REDIRECT EXAMINATION

3 BY MR. .:

than

4 Q Are you aware of any source of coke, other  
5 the empty railroad cars that come into your mine?

6 A No, sir.

7 MR. .: That's all I have. Thank you.

8 MR. CARSON: I think that's all I have.  
9 Let me check with Mr. Gouge just one second.

10 (Pause)

4

11 I don't have any questions. Thank you,  
12 sir.

13 MR. .: He waives.

14 Okay, I'll make that --

going

15 MR. CARSON: (interrupting) Are you  
16 to make that diagram an Exhibit?

17 MR. .: Yes, I'll make that Exhibit 1.

18 MR. CARSON: Okay.

19 (Whereupon Plaintiff's Deposition  
20 Exhibit No. I was marked for identification.)

excused)

21 (Witness

22 (Whereupon, at 12:35 p.m., EDST, the foregoing  
23 deposition was concluded.)

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2 5

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REPORTER'S CERTIFICATE

2  
3 STATE OF WEST VIRGINIA,  
4 COUNTY OF MERCER, to-wit:  
5

6 I, Amy S. Honaker, a Certified Court Reporter  
7 and Notary Public within and for the County and State  
8 aforesaid, duly commissioned and qualified, do hereby  
9 certify that the foregoing deposition of JOHN GOAD was

duly

10 taken by and before me at the time and place and for the  
11 purpose specified in the caption thereof, the said witness  
12 having been duly sworn by me to testify the whole truth

and

13 nothing but the truth concerning the matter in

controversy.

14 I do further certify that the said deposition  
15 was correctly taken by me by means of Stenotype, that the  
16 same was by me accurately transcribed, and that the said  
17 transcript is a true record of testimony given by said  
18 witness; that the examination, reading and signing of said  
19 deposition were waived by the witness and by agreement by  
20 and between counsel for the parties pursuant to the taking  
21 of said deposition.

any

22 I further certify that I am not connected by  
23 blood or marriage with any of the parties to this action,  
24 am not a relative or employee or attorney or counsel of

25 of the parties, nor am I a relative or employee of such

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1 4

1 attorney or counsel, or financially interested in the  
2 action, or interested, directly or indirectly, in the  
3 matter in controversy.

hand

4

In witness whereof I have hereunto set my

5

this 11th day of June, 1992.

6

My commission expires August 22, 2000.

7

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NOTARY PUBLIC

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S. Honaker, CCR

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Court Reporter and Notary

Public

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I N D E X

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|--------|--------|-----------|
|        | 2      |           |
|        | 3      |           |
| BY MR. |        | BY MR.    |
| .      | 4      | WITNESS   |
|        | CARSON |           |
|        | 5      | John Goad |
| 3      | 10     |           |
| 12     |        |           |
|        | 6      |           |
|        | 7      |           |
|        | 8      |           |
|        | 9      |           |

H I B I T S

IDENTIFICATION

12

10 GOAD'S  
IN EVIDENCE

11

12 No. 1

13

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FOR

Page 13

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20 Reporter's Certificate

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